

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (the "Agreement") is entered into this ____ day of _____, 20__ by and between *Michigan Virtual™*, formally, *Michigan Virtual University®*, with offices at 920 Municipal Way, Lansing, Michigan 48917 and, _____ ("Collaborator") with offices at _____.

Michigan Virtual and Collaborator have agreed to collaborate in pursuit of an agreement. In connection with that collaboration, *Michigan Virtual* and Collaborator may prepare and furnish the other party with certain confidential and proprietary information and materials relating to its business, ideas, and operations, including but not limited to its (a) patent and patent applications, (b) trade secrets, and (c) proprietary information, ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information. All information disclosed during these discussions, regardless of the form or media in which it is stored or disclosed, will be referred to as the "Confidential Information". The purpose of this document is to establish an agreement between *Michigan Virtual* and Collaborator governing the disclosure and use of such Confidential Information.

1. *Michigan Virtual* and Collaborator each agrees that it will: (a) treat all Confidential Information confidentially and will not disclose such information to any other person, corporation or entity except as permitted in writing by the other or as expressly permitted by the terms of this Agreement; (b) protect all Confidential information with at least the same degree of care it applies to protect its own proprietary and confidential information, but no less than reasonable care; (c) disclose the Confidential Information only to those within its organization who have a need to know the information in order to further the collaboration between the parties; (d) advise employees, agents, advisors or representatives who receive the Confidential Information of the existence and terms of this Agreement and of the obligations of confidentiality in this Agreement; and (e) use the Confidential Information only for the purpose of the contemplated collaborative relationship.
2. Notwithstanding the provisions of Paragraph 1 above, this Agreement shall not apply to any information provided by one party that: (a) is or becomes within the public domain through no act of the other party in breach of this Agreement; (b) was in the possession of the other party prior to its disclosure under this Agreement, and it can so prove; (c) is independently developed by the other party, and it can so prove; or (d) is received from another source without any restriction on use or disclosure.

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3. If either *Michigan Virtual* or Collaborator is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any information supplied to it or its representatives in the course of the parties' dealings, it will provide the other party with prompt notice (if legally permissible) of such request(s) so that the other party may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement.
4. Confidential information furnished in written, pictorial, and magnetic and/or other tangible form will not be duplicated except as reasonably necessary to carry out the limited purpose of the contemplated collaborative relationship or as expressly permitted by the other party in writing. In the event that no further business between the parties takes place after Confidential Information has been furnished or exchanged between the parties, each party will, upon request of the other party, promptly destroy or deliver the Confidential Information to the other without retaining any copy of it, and, in any event, each party and its representatives will maintain the confidentiality of all Confidential Information.
5. No failure or delay in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise preclude any other exercise of such right.
6. No rights to any patents or trademarks are provided or are to be implied by any provision of this Agreement or any Confidential Information exchanged pursuant to this Agreement. Nothing contained in this Agreement will constitute a warranty or representation by either party with respect to the infringement of trademark, service mark, patent, copyright, or other rights of third parties.
7. The parties agree that the Confidential Information is being furnished in connection with discussions in a collaborative relationship. Each party agrees that the parties desire a relationship, and agrees that it shall proceed with the negotiation of a possible agreement for such collaboration in good faith and shall not use the Confidential Information or take any actions that are not in good faith. It is understood and agreed that any discussions between the parties shall not be construed to create obligations (other than the obligations specifically created hereunder) by either party. Such obligations shall be incurred, if at all, pursuant to the terms of a separate written agreement between the parties.
8. This Agreement contains the entire Agreement between the parties relating to the subject of confidentiality, and any promise not contained in this Agreement, or any amendment to it, will not be binding on either party unless set forth in a written agreement signed by both parties.
9. In the event of a breach of this Agreement, the parties agree that irreparable harm will result, and that the amount of monetary damages may be difficult to calculate. Thus, the non-breaching party will be entitled to seek injunctive relief in addition to any other rights to which it may be entitled, without the necessity of proof of actual damages.

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- 10. The term of this agreement shall be one (1) year, unless earlier terminated or an executed contract between Michigan Virtual and the Collaborator extends beyond the one (1) year period in which case this Agreement will apply for the duration of the executed contract(s).
- 11. This Agreement will be governed by the laws of the State of Michigan. Neither party shall assign this Agreement in whole or in part without the prior written permission of the other party. Any purported assignment in derogation of the foregoing shall be void. Subject to the foregoing, this Agreement shall benefit and be binding upon the parties and their successors and assigns. This Agreement may be terminated by either party upon five (5) days' written notice to the other party; provided, however, that any obligations then existing under this Agreement as of the effective date of such termination shall continue for a period of three (3) years.

The parties have caused this Agreement to be executed by their authorized representatives.

Collaborator

Michigan Virtual University

Signature of Contractor

Michigan Virtual Signature

Date:

Date: _____

Printed Name:

Printed Name: _____

Title:

Title: _____